Definition of "Nondiscriminatory"

The FCC seeks comment on the interpretation of "nondiscriminatory" in the 1996 Act.[16] Discrimination has two components: price and nonprice. Nonprice discrimination includes the refusal to negotiate with a company or specifying certain contractual clauses in one contract and not another. The definition of price discrimination is difficult because goods are heterogenous and the definition of a product/service is complex. A product/service needs to be defined by physical, temporal, and spatial characteristics. The product differentiation accounts for such factors as volume or term discounts. Phlips considers these factors and defines price discrimination as:

> two varieties of commodity are sold (by the same seller) to two different buyers at different net prices, the net price being the price (paid by the buyer) corrected for the cost associated with the product differentiation.[17]

For example, a incumbent LEC has certain resources which are inputs into its competitors' services (loop, end office switches, tandem switches, transport facilities, signalling databases and facilities, etc.). Under certain circumstances, the incumbent LEC may have an incentive to discriminate against an unaffiliated competitor in favor of either itself or an affiliate or subsidiary.

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[16] Notice, § 156, at 58.

[17] L. Phlips, The Economics of Price Discrimination, (New York: Cambridge U. Press, 1983) at 6.

This discrimination could take either of the two forms discussed above (i.e. price and nonprice).

Other Definitions

The Notice seeks definitions on a number of terms relative to cost methodology.[18] The IURC Staff has observed that several other States have already established such definitions. While not necessarily endorsing these definitions, the IURC Staff has compiled several composite (paraphrased) definitions from other States that we believe would serve as a useful starting point for debate; they appear below, together with bibliographic citations, where appropriate.

LRIC - The change in total costs of a firm of producing an increment of output in the long run when the company uses least cost technology.[19]

TSLRIC - The firm's total cost of producing all of its services assuming the service (or group of services) in question is offered minus the firm's total cost of producing all of its services excluding the service (or group of services) in question. This strict definition requires that it be calculated by first doing two total cost studies and then subtracting one from the other. The definition incorporates a forward looking concept which includes the costs that the firm would incur today if it were to install its network from scratch. It includes both fixed and variable costs. TSLRIC for a group of services is at least equal to the sum of the TSLRIC costs of the individual services within the group. If the TSLRIC for the group is greater than this sum, the difference is

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[18] Notice, § 126, at 45.

[19] Texas Long Run Incremental Cost Methodology for LEC Services, § 23.91(c)(16), at 2.

equal to the shared costs attributable to the group of services and/or to some subset of that group.[20]

Forward Looking Costs - The prospective cost incurred by the telecommunications carrier in the production of a product or service presuming forward looking adjustment in a telecommunications carrier's plant and equipment. Forward looking costs ignore embedded or historical costs. Forward looking costs include fixed costs, variable costs, shared costs, and common costs. However, they only consider current and future costs which can be reasonably estimated based on data available to the telecommunications carrier.

Joint Costs - A cost that occurs when the production process involves intermediate or final outputs that maintain fixed proportions with respect to two or more services.[21]

Common Costs - The costs of shared resources necessary and used to provide a service or family of services. Common costs are not avoided if an individual service is discontinued, but could be avoided if a family of services was discontinued. This cost component does not include the common overhead costs of the firm.

Shared Costs - The equivalent of common costs.

Stand Alone Costs - The total cost incurred by a firm to produce a given volume of a service or group of services as if it were the sole service or group of services produced by that firm.[22]
It is used to determine price ceiling and to determine if the customers of one product or service are subsidizing the customers of another product or service.

Embedded Costs - The cost of a product or service at the time at which is was purchased. It can be derived from the accounting books.

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[20] Colorado Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30 Rule 2 (45), at 8.

[21] Colorado Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30 Rule 2 (19), at 4.

[22] Colorado Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30 Rule 2 (40), at 7.

Fully Distributed Costs - The costs derived from the process of assigning the total historical costs of the firm to individual products or services using cost accounting, engineering, and economic standards. Fully distributed costs reflect all costs related to the provision of service including a return on investment.[23]

Overheads - General and administrative expenses incurred in operating and managing a firm that are not directly attributable to a particular service.[24]

Contribution - The difference between price and incremental cost. Since incremental costing cannot cover joint and common costs, a contribution is needed for a company to remain solvent.

Residual Costs - That part of cost that is not directly attributable to a particular service. Similar to common costs.

IV. CONCLUSION

The 1996 Act contains clearly defined roles for both the FCC and state Commissions based on the fundamental division of authority in the federal Communications Act of 1934, as amended by the 1996 Act.[25] The tone of the Notice leads the IURC Staff to believe that the FCC is not determined to work cooperatively with the states to implement local exchange competition, as envisioned by Congress in the 1996 Act, but, rather, has undertaken a position that a national framework in the only way in which local exchange competition may be accomplished. The IURC Staff staunchly

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[23] Colorado Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30 Rule 2 (14), at 4.

[24] Texas Long Run Incremental Cost Methodology for LEC Services, § 23.91(c)(5)(A), at 1.

[25] 47 U.S.C. § 152(b).

disagrees with this position; Indiana and many other states are moving ahead with local exchange competition based upon local market conditions, which may or may not be analogous to some 'national paradigm' established by the FCC.

The IURC Staff asks the FCC to fulfill the intent of Congress in the 1996 Act by developing the broadest federal guidelines possible that will provide States the most flexibility in implementing local exchange competition.

IN THE MATTER OF
IMPLEMENTATION OF THE LOCAL EXCHANGE
PROVISIONS IN THE TELECOMMUNICATIONS
ACT OF 1996
CC DOCKET NO. 96-98

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